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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.C., et al.,

Defendants and Appellants.

D075049

(Super. Ct. No. SJ13391)

APPEALS from findings and orders of the Superior Court of San Diego County,
Kimberlee A. Lagotta, Judge. Affirmed.

Rosemary Bishop, under appointment by the Court of Appeal, for Defendant and
Appellant C.C.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant J.C.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Jesica N. Fellman, Deputy County Counsel, for Plaintiff and Respondent.

Appellants challenge an order denying an evidentiary hearing on the mother's petition under Welfare and Institutions Code section 388 to remove her daughter from a placement for lack of appropriate supervision.¹ Appellants assert the placement is not safe and therefore the juvenile court erred in finding that the petition did not state a prima facie case of changed circumstances and best interests of the child. Although we agree appellants made a prima facie showing of changed circumstances, we find appellants did not make a prima facie showing that changing the child's placement was in her best interests under the totality of the circumstances. We therefore affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

J.C., who is now 17 years old, has a history of conflict with her mother and father (together, parents).² When J.C. was 13 years old, her parents began having difficulty managing her increasingly defiant behaviors. At age 15, J.C. was required to withdraw from a Catholic high school for texting provocative material and having inappropriate sexual material on her computer. Mother and Father were unable to moderate J.C.'s behaviors and sought psychiatric care for J.C. She was diagnosed with acute stress disorder and depression and referred for therapy.

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

² For privacy and clarity, we refer to the parents as "Mother" and "Father."

In late May 2017, Father caught J.C. e-mailing her boyfriend, which he had forbidden, and punished her by requiring her to sit on the floor and extend her arms and legs for hours. If J.C. moved, Father hit or slapped her, causing large, painful bruises on her arms. He also slapped J.C.'s face, causing her nose to bleed. Mother was present during this and other incidents. J.C. said her mother told her "it was a mistake to have you" and her father said she was "an effin mistake" and he would throw her away if he could.

Several days later, J.C. ran away from home to family friends. They observed large bruises on her arms. J.C. reported the abuse to police, who set up a monitored, pretext call between J.C. and Father. During the telephone call, Father admitted he had bruised J.C.'s arms and made her nose bleed. He defended his actions as necessary discipline in view of J.C.'s risky behavior with boys and disregard of the parents' rules.

The Agency detained J.C. in foster care and filed a petition alleging she had suffered, or was at risk of suffering, serious physical harm by Father. (§ 300, subd. (a).) On January 30, 2018, after protracted jurisdictional and dispositional proceedings, the juvenile court found that Father clearly used "excessive discipline . . . beyond the scope of what is legally allowed in disciplining a child." The court removed J.C. from Father's custody, ordered him out of the home, and placed J.C. with Mother.

On January 31, J.C. was admitted to the hospital on a psychiatric hold after threatening to harm herself. She said she would commit suicide before she would return

home. J.C. refused to allow Mother to visit her. J.C.'s TERM³ therapist was concerned J.C. might decompensate if returned home. The social worker believed J.C.'s placement with Mother required therapeutic intervention and recommended a transition plan to ensure J.C.'s safe return to Mother's care.

Minor's counsel petitioned to remove J.C. from Mother's care and place her with her godparents, the S.'s. On February 8, the court summarily denied minor's counsel's petition and found that the Agency's three-month transition plan with immediate therapeutic intervention and conjoint therapy was appropriate. During the transition period, J.C. was to remain in the S.'s care.

On March 12, J.C. again voiced suicidal thoughts and was hospitalized for observation. Her condition was diagnosed as major depressive disorder, post traumatic stress disorder, and anxiety. The social worker said there had been little progress since the last hearing. J.C.'s crisis was apparently provoked by Mother threatening to have J.C.'s TERM therapist removed because J.C. had been posting on social media. J.C. felt she was being isolated from her support network. The social worker believed Mother lacked awareness about age-appropriate expectations and that she and J.C. were engaged in parent/adolescent power struggle. The social worker said in view of Mother's limited insight and J.C.'s acting out, there was little hope J.C. could be returned home "anytime soon."

³ TERM (Treatment and Evaluation Resource Management) is a mental health program under the direction of the County of San Diego Board of Supervisors and provides services to dependent and delinquent children.

On March 23, J.C. ran away from the S.'s. The social worker was able to contact J.C. J.C. said she was safe, was not suicidal, and would contact the social worker if she were in an unsafe situation. The social worker reported he could not conscientiously recommend J.C.'s return home because it would compromise her safety and well-being. The Agency filed a supplemental petition under section 387 to remove J.C. from Mother's custody. The juvenile court summarily denied a hearing on the petition. The Agency filed a petition with this court for a writ of mandamus.

On April 24, J.C. told the social worker she was safe and had maintained contact with her court-appointed special advocate (CASA), attorney, TERM therapist, and the police officer who was assigned to her missing persons case. The social worker continued to contact J.C. approximately twice a month and encouraged her to return to care, offering the S.'s home as an option.

On May 23, this court issued an order and alternative writ of mandate directing the juvenile court to grant the Agency's petition for a jurisdictional hearing under section 387 or, alternatively, show cause why the relief requested should not be granted.

On June 8, the juvenile court set a jurisdictional hearing under section 387. The court found that return home would be detrimental to J.C. and ordered her detained out of the custody of her parents.

On June 18, J.C. arranged for the social worker to take her to Polinsky Children's Center. J.C. was clean, properly dressed, well-groomed, and well-oriented. She denied any anxiety or suicidal thoughts. Mother attempted to visit but J.C. refused to see her. J.C. continued to present with anxiety and feelings of hopelessness about improving her

relationship with her family. She missed her siblings. The service provider for Mother's child abuse group described Mother as "polished, lacking empathy, and careful about what she disclosed." Mother denied any accountability regarding the original protective issue.

On June 25, J.C. was accepted for placement at the San Pasqual Academy (Academy). She was very excited about living and attending school on campus.

At a hearing on June 27, 2018, the juvenile court found:

"On or about January 30, 2018, to the present, the Court ordered placement with the mother with a plan to transition the minor back into the home. The child has been previously diagnosed with major depressive disorder with posttraumatic stress disorder, and the child has been hospitalized on two separate occasions and has threatened to kill herself. Given the ongoing mental health status, there is no current ability to safely transition the child back into the mother's care, thus the child requires special care and treatment to achieve the goal of returning home and her current level of placement constitutes a change in the level of care—the level of care provided requiring a modification of the previous court order. And that the recommended modified disposition is placement with the licensed foster home level of care at San Pascual Academy."

The parents agreed to J.C.'s removal from Mother's care and waived reunification services with the understanding they could access postpermanency services when J.C. was willing to engage in therapy with either parent. The court ordered J.C. placed at the Academy and set a permanency plan selection and implementation hearing (366.26 hearing) for October 18, 2018. J.C. entered the Academy on June 28.

In reports prepared for the 366.26 hearing, the social worker recommended: the court select the permanent plan of long-term foster care for J.C., with continued placement at the Academy; Mother have unsupervised visits at least once a month with

J.C., taking J.C.'s wishes into consideration; and Father not be allowed visits as long as a criminal court restraining order remained in effect.

The social worker reported that J.C. was in good general health. She played on the Academy's volleyball and basketball teams. In September, she earned the privilege of leaving the Academy on a day pass. J.C.'s goal was to be in the "honor house." She currently had "all A's" in her classes. J.C. met daily with her house therapist and wanted to resume therapy with her TERM therapist. She did not present with any behavioral concerns. Since her placement at the Academy, she had not left the campus without permission. At an Academy team meeting on September 26, the team agreed that J.C. was goal oriented, a hard worker, funny, social, engaging, helpful, nice to peers, and had a good rapport with staff. J.C. wanted to visit her siblings but her mother would only allow sibling visits if she were present.

CASA visited J.C. twice a month. CASA said J.C. was an intelligent, engaging, and ambitious 16-year-old. J.C. was very goal oriented and planned to attend a four-year college after graduating from high school. She worked at the Academy's cafe as a baker. J.C. was a culinary expert. Her baked goods were very popular. J.C. seemed excited about her life and proud of her accomplishments. She expressed an interest in visiting her mother but wanted the visits to be supervised. J.C. was benefitting from having a stable placement and had a good support system at the Academy. However, CASA was concerned J.C. was not being academically challenged and recommended she transfer to a comprehensive high school before the start of her senior year.

The social worker filed an addendum report on November 16. On October 3, the Academy informed the Agency that a six-second video had been circulated to several students showing a male youth (youth) and J.C. engaged in a sexual act. The social worker met with J.C. J.C. was crying and confirmed she was in the video, saying she could not believe the youth, who was a friend, would betray her. She explained that several months earlier, most likely in July, she and her friend were having some personal issues. They were comforting each other and "it just happened." Afterwards, they agreed it would not happen again. J.C. continued to cry and was visibly upset. She confirmed the sexual act was consensual. J.C. was not aware she was being recorded. She did not consent to the recording. She was disappointed by her friend's actions but did not feel unsafe at the Academy. The social worker made a child abuse referral and cross-reported the incident to law enforcement.

The social worker spoke with J.C. the following week. J.C. said the youth told her that a female student had possibly distributed the video. J.C. had had some issues with the female student in the past and was trying to stay away from her. J.C. did not express any concerns about her safety on campus. The Agency notified the parents about the incident on October 18.

At a hearing on November 19, the parents changed their position on the recommended permanency plan because it involved J.C.'s continued placement at the Academy, asked for a contested 366.26 hearing, and informed the court that Mother intended to file a section 388 petition for J.C.'s removal from the Academy. On November 26, Mother filed a section 388 petition, alleging the Academy had failed to

properly supervise J.C. and the Agency did not take appropriate steps to protect her. In support, the petition cited the October 3 incident report and the Academy's decision to issue a day pass to J.C. 10 days later even though they were familiar with her prior history of sexualized behavior. The Academy never notified the parents about the incident. The Agency reported the incident to the wrong police department and the complaint was not processed until early November. The youth who exploited J.C. remained in the same placement and it was not clear what safety measures had been implemented to keep J.C. safe. Moreover, the Academy was not facilitating family visitation and had failed to notify the parents of any of J.C.'s medical appointments or educational decisions. No efforts had been made to facilitate conjoint therapy. The Academy was not meeting J.C.'s needs and had failed to provide a safe, structured environment where she could thrive; therefore, continued placement at the Academy was no longer in J.C.'s best interests. The petition asked the court to move J.C. from the Academy to another suitable placement.

After reviewing the petition, the juvenile court found that the best interests of the child may be promoted by the proposed modification and set a hearing on November 30.

The Agency filed an addendum report opposing the proposed modification. The social worker stated that J.C. had gained stability since she was placed at the Academy. She attended school regularly, participated in enhancement activities and sports, worked on campus, and received therapeutic and independent living skills support services. After learning about the incident on October 3, the Agency and the Academy took measures to ensure J.C.'s safety and well-being. J.C. did not express any concerns about her safety.

Her house clinician provided daily therapeutic support and education about the impact of J.C.'s behavior, how to handle the social aspect of the incident, and sexual education. The Academy changed J.C.'s level of supervision to more closely monitor her and provided support as needed during school hours. J.C. received additional support from her TERM therapist.

J.C. was an excellent student. She had earned the "Certificate of Recognition for Academic Excellence and Positive Attitude." She played on the basketball team, enjoyed other campus activities, and was preparing to participate in the Junior Guardians Scholar Program. J.C. worked at the school's cafe from 6 a.m. to 8 a.m. There were no concerns about her behavior.

With respect to Mother's claim the Academy was not facilitating visitation, the social worker said she contacted Mother on August 2. The social worker told Mother her visits with J.C. were unsupervised and she could visit whenever J.C. was available. Mother said she and J.C.'s uncle wanted to see J.C. on August 3. The social worker contacted J.C. who told her she was not comfortable visiting her uncle but was willing to see her mother. Mother did not respond to the social worker, did not visit J.C. on August 3, and did not contact J.C. to schedule a visit.

After the social worker provided multiple dates and times to Mother, J.C. had a visit on November 25 with Mother and a younger sister. J.C. said the visit was "bad." During the visit, Mother told J.C. her father did not touch her and that she should stop lying. J.C. ended the visit.

With respect to Mother's claim that she was not informed about J.C.'s education, the social worker said on September 11, Mother requested information about J.C.'s classes, which the social worker provided. Mother did not otherwise contact the Agency, the Academy, or J.C.'s school counselor. Mother was invited to attend one of J.C.'s school meetings on November 29, but did not attend and did not answer her telephone when the school counselor tried several times to reach her.

The social worker concluded that changing J.C.'s placement would cause a huge disruption in her life. There was no immediate alternative placement for her. Placement with the S.'s was no longer an option. The social worker believed moving J.C. from the Academy would be detrimental to her well-being, emotional health, and educational success.

At a hearing on November 30, the juvenile court said that in addition to the section 366.26 hearing, the matter was on calendar to address the prima facie requirement for an evidentiary hearing on Mother's section 388 petition and asked the parties to address the issue. Mother argued the petition stated a prima facie case and she was an appropriate placement for J.C. Alternatively, the Agency could assess other appropriate placements. She asserted the Agency did not take appropriate steps to protect J.C. after learning about the incident. The Agency had allowed J.C. to leave the Academy under the supervision of her boyfriend's parents, who Mother and Father believed had harbored J.C. while she was missing. Mother contested the social worker's account of her attempts to arrange visitation and stated that J.C.'s account of their recent visit was not true.

Mother argued the fact J.C. was doing well with school and extracurricular activities did not mean that the placement was appropriate for her. Based on J.C.'s history of sexualized behavior, she required a more structured, supervised setting. The parents did not want to punish J.C. for the July incident, but her behavior remained an issue. The Agency's efforts to ensure J.C.'s safety were not appropriate. The youth remained at the Academy. Law enforcement would not investigate the allegations of sexual abuse, sexual exploitation, and child pornography unless J.C. asked them to do so. That matter should not be left up to a 16-year-old. Mother asked the court to place J.C. in her care and order the Agency to evaluate other placement options.

Father joined in Mother's argument. J.C. remained in the same school with the youth who had sexually exploited her, created child pornography, and distributed it. While law enforcement was talking to J.C., the youth had access to dissuade her from testifying or pursuing charges. Father wanted J.C. removed for her own safety. He was also concerned about her education. She was not participating in college preparatory classes. Father asked the court to find that Mother's petition stated a prima facie case of changed circumstances. In placing J.C. at the Academy, no one had anticipated that J.C. would be sexually exploited and depicted in child pornography distributed on the internet.

The Agency argued the facts alleged in the petition, if true, would not sustain a favorable decision on the merits and therefore, the petition did not meet the prima facie requirement for an evidentiary hearing. J.C. was placed at the Academy on June 28, the incident was in July, and no one knew about it until October 3. The social worker

reported the incident to the child abuse hotline, who sent it to law enforcement. There was a misunderstanding about jurisdiction. However, there was an investigation by law enforcement. J.C. did not want to press charges, and none were filed. The only change of circumstances was J.C. had stabilized at the Academy, was self-modulating her actions, and was doing very well. She had not displayed any sexualized acting out or any other inappropriate behavior since the incident in July. She did not have any thoughts of self-harm. The petition made no showing it was in J.C.'s best interests to move her from her current placement.

Minor's counsel said she did not discount the seriousness of the incident, but it could have happened elsewhere. At the Academy, J.C. had more access to more services, including the support of her house parents, therapists, social worker, and others. If she were moved to a different environment, she may not have the same structure and support, and it would destabilize her. Ultimately, J.C. was a young adult who was going to be making her own decisions. In view of the parents' waiver of reunification services, minor's counsel asked the court to give more weight to J.C.'s position and opinion. The focus of the case was on giving J.C. independent living skills and helping her gain the insight to make good decisions. In view of all the circumstances, it was not in J.C.'s best interests to move her to an unknown placement. Minor's counsel asked the court to deny the petition in its entirety.

The juvenile court considered the totality of the documentary evidence, including the Agency's reports, Mother's petition, the Agency's response, and the parties' arguments. The court found there was not prima facie evidence to show a change of

circumstances sufficient to find that modifying J.C.'s placement was in her best interests. J.C. appeared to be in a structured, supervised setting that was addressing her therapeutic and academic needs.⁴ The court explained, "Now, what I was trying to say was that whether it was San Pasqual Academy or whether it's another school, private or public, the victim of the incident is not the one who is to be disciplined and removed from an environment where she is thriving."

The court was concerned about the youth's continued presence on campus and asked the Agency why he had been allowed to remain. County counsel stated there had been consequences for the youth, including "a lot of intervention," and the level of supervision had been increased. He and J.C. were not living at the same cottage.

The juvenile court noted that J.C. was stable, there had not been any further incidents since July, she appeared to be excelling in school, and proper therapeutic support was in place. All parties were aware that the problem with visitation between J.C. and her mother and siblings needed to be addressed. However, the focus was on J.C.'s needs, particularly her best interests in a permanent placement. The court denied the section 388 petition.

The juvenile court adopted the permanency plan recommendation by submission of all parties. The court vested J.C.'s care, custody, and control with the Agency for suitable placement in long-term foster care and found that the current placement at the Academy was appropriate.

⁴ At this point, Father disrupted the proceedings and was excused.

DISCUSSION

A. Relevant Law and Standard of Review

Under section 388, a party may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, there is a change of circumstances or new evidence, and the proposed modification is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) The juvenile court shall order a hearing where "it appears that the best interests of the child . . . may be promoted" by the new order. (§ 388, subd. (d).) "The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310 (*Marilyn H.*).

The court must liberally construe the petition in favor of its sufficiency. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309; Cal. Rules of Court, rule 5.570(a).) In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189 (*Justice P.*); *In re K.L.* (2016) 248 Cal.App.4th 52, 61-62.) "The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806 (*Zachary G.*).

"While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157

(*G.B.*.) The child's best interest analysis must look at the "totality of a child's circumstances." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201 (*Chantel S.*); *In re Vincent M.* (2008) 161 Cal.App.4th 943, 960.)

We review a juvenile court's decision to deny a section 388 petition without an evidentiary hearing for abuse of discretion. (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 62; *Zachary G.*, *supra*, 77 Cal.App.4th at p. 808.)

B. The Court Did Not Abuse Its Discretion in Summarily Denying the Petition

Both appellants contend the trial court erred in summarily denying Mother's section 388 petition to remove J.C. from the Academy. Mother asserts the distribution of the video was an act of exploitation and constitutes a change of circumstances sufficient to merit an evidentiary hearing on her petition to change J.C.'s placement. She argues J.C.'s assertion she felt safe at the Academy was of no importance; the question was whether she was safe in a facility that still housed the youth who had taped a sexual act without J.C.'s consent and then distributed it electronically, with or without the assistance of another student at the Academy. She contends the Agency and the Academy did not take appropriate measures after the incident to ensure J.C.'s safety, and the Agency provided only minimal information about the youth's status at the Academy. Mother further contends it was not in J.C.'s best interests to stay in an unsafe placement, and the juvenile court erred when it did not allow the Agency's account to be tested through the evidentiary process. Father asserts the petition states a prima facie case of changed circumstances because J.C. performed a sexual act on another resident and there was evidence to show that a criminal sexual act had been committed. The fact J.C. was

involved in a criminal act established that she lacked sufficient supervision at the Academy and was able to engage in dangerous and inappropriate behavior without deterrence or consequence.

We agree with parents that there was a substantial change in circumstances following J.C.'s placement at the Academy. Shortly after her arrival at this new school, J.C. engaged in a consensual sexual act with another student. Without J.C.'s knowledge or consent, the other youth recorded J.C. while she was performing the sexual act and the recording was later disseminated to several students, causing J.C. to suffer some distress and a sense of betrayal. Although the Agency was notified about the video's circulation on October 3, the parents were not notified by the Agency until October 18. Upon learning of the incident, Mother and Father were understandably concerned about J.C.'s physical and emotional well-being, particularly because the youth involved in this incident was still attending the Academy. Parents made a prima facie showing that circumstances surrounding J.C.'s initial placement changed given the serious nature of the incident, the Academy's and the Agency's failure to immediately notify parents, and the limited information available concerning youth's continued attendance at the Academy. (See *G.B.*, *supra*, 227 Cal.App.4th at p. 1160 [changed circumstances are measured from the time after the challenged order was made].)⁵

⁵ We conclude that parents' remaining claims do not establish a prima facie showing of changed circumstances. The visitation issues between J.C. and Mother were not new. The court could reasonably conclude J.C.'s reluctance to visit with Mother in an unsupervised setting was not the result of Agency's failure to facilitate family contact. CASA's recommendation J.C. attend a more academically challenging high school for her

Although parents made a prima showing of changed circumstances, that is not sufficient to show that the juvenile court abused its discretion in summarily denying Mother's petition. To prevail on the section 388 petition, parents were required to establish by a preponderance of the evidence that "(1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child." (*Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.) Without a prima facie showing on *both* elements of a section 388 petition, the juvenile court's obligation to hold an evidentiary hearing was not triggered. (*Zachary G.*, at p. 806; see Cal. Rules of Court, rule 5.570(d)(1) [§ 388, subd. (a), petition may be denied without a hearing if it "fails to state a change of circumstance or new evidence . . . or fails to show that the requested modification would promote the best interest of the child"]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 (*Kimberly F.*) ["It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child."].)

senior year does not show the Academy cannot meet her needs or constitute changed circumstances. Finally, we reject Father's argument the petition states a prima facie case of changed circumstances because J.C. was either a victim of sexual abuse or she had engaged in a criminal sexual act under Penal Code section 261.5, subdivision (a). Contrary to Father's argument, J.C.'s behavior does not subject her to possible criminal penalties under Penal Code section 261.5, subdivision (a). That subdivision prohibits "an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor." "Sexual intercourse" has a specific definition (see, *People v. Mendoza* (2015) 240 Cal.App.4th 72, 79), and is not the sexual act at issue here. Moreover, it does not necessarily follow that a 16-year-old minor who voluntarily engages in a sexual act with another minor is a victim of sexual abuse within the meaning of the statute. (Cf. *In re Kyle F.* (2003) 112 Cal.App.4th 538, 543; *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 261; *County of San Luis Obispo v. Nathaniel J.* (1996) 50 Cal.App.4th 842, 845.)

We conclude parents failed to satisfy the second requirement under section 388: they failed to make a prima facie showing that removing J.C. from the Academy at this time would serve her best interests. When determining whether the petition made the necessary showing, the juvenile court properly considered the entire factual and procedural history of the case. (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 62; *Justice P.*, *supra*, 123 Cal.App.4th at p. 189.)

Prior to J.C.'s placement at the Academy, there were significant concerns about her mental health condition and the choices she was making. In ordering J.C.'s placement at the Academy in June 2018, the juvenile court found that J.C. was previously diagnosed with major depressive disorder with posttraumatic stress disorder, was hospitalized on two separate occasions, and had threatened to kill herself. The record also shows that J.C.'s whereabouts had been unknown for three months, she had not attended school during that time, and had no contact with her parents.

After her placement at the Academy, J.C. gained stability, did not have any mental health crises, and was motivated and engaged in school and work. By late September, J.C. was described by Academy staff as "goal oriented, a hard worker, funny, social, engaging, helpful, nice to peers, and has a good rapport with staff." J.C.'s CASA said J.C. was "excited about life and proud of her accomplishments." The incident detailed in the October 3 report was the only documented incident involving J.C. since her placement at the Academy five months earlier. Although the incident was serious, J.C.

denied feeling unsafe and wanted to stay at the Academy.⁶ She received immediate and ongoing counseling and support when the Academy learned of the distribution of the video, continued to do well in school, increased her ability to self-regulate her behavior, and was able to set long-term goals and continue to work to achieve them.

Although the Academy and the Agency did not immediately notify parents when they learned of the recording on October 3, they did take other appropriate actions to help J.C. The Agency and the Academy ascertained J.C.'s well-being and provided more services to her, including immediate therapeutic services, sex education, and access to daily therapeutic and support services. The Academy increased supervision on J.C., the youth, and other residents to avoid similar incidents in the future. And the Agency filed a child abuse report and cross-reported the incident to law enforcement. Thus, despite the serious nature of the isolated incident shortly after her initial placement, the record establishes a significant improvement in J.C.'s overall well-being in light of the history of the dependency case.

Given the child's history in the dependency proceeding, the juvenile court could reasonably find the petition did not specifically describe how the modification sought would advance J.C.'s best interests. (*G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) The

⁶ Although parents contend J.C.'s views regarding her safety should not be given significant weight, Mother's counsel also informed the court, "We don't really see that this child—the perpetrator is necessarily a threat." In any event, the juvenile court took appropriate action and directed all parties—including Mother, the Agency, CASA, and minor's counsel—to contact the Academy and "address . . . why the perpetrator of the incident remains on campus." The juvenile court took appropriate action rather than punishing J.C., as the victim of the incident, by removing her from the Academy, destabilizing her, and jeopardizing all the progress she has made.

petition asserted J.C. requires a safe, structured placement, which is not contested, but did not identify a more suitable placement. Mother argues the lack of any identified alternative placement is not an excuse for continuing J.C.'s unsafe placement at the Academy. Father states it is not in J.C.'s best interests to stay in a placement in which she was so unsupervised she was able to engage in a sex act. Even assuming this incident could have been prevented by closer monitoring, we cannot conclude that the juvenile court abused its discretion in finding the petition did not state a prima facie case that removing J.C. from the Academy promotes her best interests. (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 419 [juvenile court need not order a hearing if there is no showing the proposed modification promotes the best interests of the child].)

The child's best interest analysis must look at the "totality of a child's circumstances." (*Chantal S., supra*, 13 Cal.4th at p. 201.) No single factor controls the analysis. (*Kimberly F., supra*, 56 Cal.App.4th at p. 529.) The court must look at the child as a "whole person," including her history. (Cf., *id.* at p. 530.) In determining whether the petition stated a prima facie case of best interests, the court reasonably considered the proposed modification in view of J.C.'s previous instability, including difficulties in foster care and two hospitalizations for suicidal ideation, as well as the current procedural posture of the case. The parents were not seeking family reunification and the focus of the case had shifted to J.C.'s interests in permanency and stability. (Cf. *In re Dakota H.* (2005) 132 Cal.App.4th 212, 223 (*Dakota H.*).) The juvenile court reasonably concluded that the petition did not specifically describe how J.C.'s best

interests would be promoted by removing her from a stable, supportive placement to an as yet unidentified placement. (*G.B.*, *supra*, 227 Cal.App.4th at p. 1157.)

In sum, parents were required to show not only significant changed circumstances, but also that a change of J.C.'s placement would be in the child's best interests. Because parents failed to make this two-part showing, we conclude the trial court did not abuse its discretion in summarily denying the section 388 petition.

C. Mother Forfeited Her Due Process Claim

After reviewing the petition, the court set the matter for an evidentiary hearing. At the hearing, the court asked the parties to argue whether the petition stated a prima facie case. Mother presented her case without objection, as did the other parties. Mother now claims her due process rights were violated when the court set an evidentiary hearing and then denied an evidentiary hearing on the petition. By failing to object in juvenile court Mother has waived her right to claim error on appeal. (*Dakota H.*, *supra*, 132 Cal.App.4th at p. 221 [a party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court].)

DISPOSITION

The findings and order are affirmed.

GUERRERO, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.